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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

IN THE MATTER OF

COMMENCEMENT BAY  
NEARSHORE/TIDEFLATS  
SUPERFUND SITE;  
HYLEBOS WATERWAY

ATOFINA CHEMICALS, INC.,  
GENERAL METALS OF  
TACOMA, INC. (d/b/a SCHNITZER  
STEEL OF TACOMA

Respondents.

EPA Docket No. CERCLA 10-2002-0065

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMEDIAL DESIGN  
AND REMEDIAL ACTION

Proceeding Under Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act, as  
amended, 42 U.S.C. § 9606(a)



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### I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondents to perform a remedial design in Segments 1 and 2 of the Hylebos Waterway Problem Areas for the remedy described in the September 30, 1989 Record of Decision, as modified by the July 28, 1997 Explanation of Significant Differences, and August 3, 2000 Explanation of Significant Differences for Commencement Bay Nearshore/Tideflats Superfund Site ("CB/NT Site") and to implement the design by performing a remedial action. This Order is issued to Respondents by the United States Environmental Protection Agency ("EPA") under the authority

1 vested in the President of the United States by Section 106(a) of the Comprehensive Environmental  
2 Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606(a). This  
3 authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580  
4 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on  
5 May 11, 1994, by EPA Delegation No. 14-14-B. The Regional Administrator of Region 10 delegated  
6 this authority to the Director of the Office of Environmental Cleanup on October 5, 1998 by Regional  
7 Delegation No. R10 14-14-B.  
8

## 9 10 II. FINDINGS OF FACT

11 2. The Hylebos Waterway ("Site") is within the Commencement Bay  
12 Nearshore/Tideflats Superfund Site ("CB/NT Site"), and encompasses approximately 285 acres, in the  
13 northern-most Waterway in Commencement Bay that is bordered by Taylor Way to the south and  
14 Marine View Drive to the north in Tacoma, Pierce County, Washington and depicted generally on the  
15 map attached to this Order as Attachment 2. The Hylebos Waterway Site, includes but is not limited  
16 to, the Mouth of Hylebos Waterway Problem Area, the Head of Hylebos Waterway Problem Area, and  
17 all other areas of the Hylebos Waterway extending from minus 60 foot depth line in the bay to the mouth  
18 of the Hylebos Creek. The Work required under this Order addresses Segments 1 and 2 of the Site as  
19 designated by the Pre-Remedial Design Evaluation Report, which was approved by EPA in November  
20 1999, and depicted on the maps attached to this Order as Attachment 3.

21 3. a. Respondent ATOFINA Chemicals, Inc. (formerly Elf-Atochem North  
22 America, Inc. and Pennwalt Corp.) was, from on or about 1927 until the present, the owner and  
23 operator of a facility at 2901 Taylor Way, Tacoma, Washington that manufactured among other things,  
24 chlorine, caustic soda, and pesticides. ATOFINA Chemicals, Inc. (formerly Elf-Atochem North  
25 America, Inc. and Pennwalt Corp.) was, from on or about 1957 until the present, the owner of a facility  
26 used as a log sort yard at 3009 Taylor Way, Tacoma, Washington, within, on or adjacent to the Site.

1 A release or threat of a release of hazardous substances from the facilities, including, but not limited to,  
2 arsenic, DDT, mercury, PCBs, hexachlorobutadiene, hexachlorobenzene, volatile aromatic  
3 hydrocarbons, copper, lead, zinc were disposed of at the Site. Remediation consistent with the ROD is  
4 required on or adjacent to the facilities.

5  
6 b. Respondent General Metals of Tacoma, Inc. (d/b/a Schnitzer Steel of Tacoma)  
7 was, from on or about 1959 until the present, the owner and operator of a facility at 1902 Marine View  
8 Drive, Tacoma, Washington, within, on or adjacent to the Site. A release or threat of a release of  
9 hazardous substances including, but not limited to, PCBs, arsenic, copper, lead, nickel, zinc, and  
10 polyaromatic hydrocarbons were disposed of at the Site. Remediation consistent with the ROD is  
11 required on or adjacent to the facilities.

12 4. The respondents identified in Paragraph 3 are collectively referred to as  
13 "Respondents".

14 5. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the CB/NT  
15 Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the  
16 Federal Register on September 8, 1983, 48 Fed. Reg. 40,658. The CB/NT Site is located in Tacoma,  
17 Washington, at the southern end of the main basin of Puget Sound.

18 6. Because of the complexity of the CB/NT Site, Superfund response actions are  
19 currently coordinated under seven operable units managed primarily by EPA and Ecology, including (1)  
20 Operable Unit 01 - CB/NT Sediments; (2) Operable Unit 02 - Asarco Tacoma Smelter; (3) Operable  
21 Unit 03 - Tacoma Tar Pits; (4) Operable Unit 04 - Asarco Off-Property; (5) Operable Unit 05 - CB/NT  
22 Sources; (6) Operable Unit 06 - Asarco Sediments; and (7) Operable Unit 07 - Asarco demolition.  
23 Operable Unit 01 addresses cleanup of 10-12 square miles of shallow water, shoreline, and aquatic lands  
24 located in the industrial tideflats area of the active commercial seaport of the City of Tacoma. This  
25 Order addresses Operable Unit 01, CB/NT Sediments, in the Hylebos Waterway.

26 7. In response to a release or a substantial threat of a release of hazardous substances

1 at or from the CB/NT Site, EPA entered into a CERCLA Cooperative Agreement with the State of  
2 Washington, through the Department of Ecology ("Ecology") to conduct a Remedial Investigation and  
3 Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.  
4

5 8. Ecology completed a Remedial Investigation ("RI") Report on contaminated  
6 sediments and sources and the results were published in August 1985. The results of the Feasibility  
7 Study ("FS") were published in February 1989. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,  
8 EPA published notice of the completion of the FS and of the proposed plan for remedial action on  
9 February 24, 1989, in a major local newspaper of general circulation. EPA provided an opportunity for  
10 written and oral comments from the public on the proposed plan for remedial action. A copy of the  
11 transcript of the public meeting is available to the public as part of the administrative record upon which  
12 the Regional Administrator based the selection of the response action.

13 9. The decision by EPA on the remedial action to be implemented at the CB/NT Site  
14 is contained in a final Record of Decision ("ROD"), executed on September 30, 1989. Both the State  
15 of Washington and Puyallup Tribe of Indians concurred on the Record of Decision. The ROD includes  
16 EPA's explanation for any significant differences between the final plan and the proposed plan as well  
17 as a responsiveness summary to the public comments. EPA has issued two Explanations of Significant  
18 Differences ("ESDs") to the CB/NT ROD that are relevant to this Order, one on July 28, 1997 and one  
19 on August 3, 2000. The State of Washington concurred on both ESDs. Public comment was taken on  
20 both ESDs and each ESD includes EPA's responsiveness summary to the public comments. The Record  
21 of Decision, 1997 ESD, and 2000 ESD are attached to this Order as Attachment 1 and are incorporated  
22 by reference. The Record of Decision and ESDs are each supported by an administrative record that  
23 contains the documents and information upon which EPA based the selection of the response action.

24 10. The ROD selected the remedy for remediation of Operable Unit 01 sediments  
25 and sources of contamination (Operable Unit 05) in eight problem areas of the CB/NT Superfund Site,  
26 including the Head and Mouth of the Hylebos Waterway. There are five elements of the remedy for  
27

1 contaminated marine sediments: (1) Site use restrictions; (2) source control measures; (3) natural  
2 recovery; (4) active sediment remedial action; and (5) long-term source and sediment monitoring. The  
3 possible options for active sediment remedial action are one or more of the following four technologies:  
4 in-place capping; dredging and confined aquatic disposal; dredging and nearshore disposal; or dredging  
5 and upland disposal.

6  
7 11. The RI/FS evaluated contaminants detected at the CB/NT Superfund Site to  
8 identify problem chemicals that pose the greatest risk to human health and the environment. The  
9 technical approach was to establish information relating specific chemicals to biological effects in  
10 various aquatic organisms and to quantifiable human health risks. Problem chemicals were defined as  
11 those chemicals whose concentration exceeded the low apparent effects threshold (AET) in a particular  
12 sediment problem area. The AET was defined as the contaminant concentration above which toxicity  
13 or benthic effects are always observed in a data set developed specifically for the Puget Sound using  
14 three biological effects tests: amphipod mortality, oyster larvae abnormality, and benthic infaunal  
15 depressions. Human health risks due to the ingestion of contaminated seafood were estimated using  
16 risk assessment methods and chemical concentrations detected in english sole muscle and liver tissue  
17 and crab muscle tissue.

18 12. Based on the RI/FS and the 1997 ESD, the current risks to public health are  
19 associated primarily with consumption of seafood organisms that have accumulated PCBs from  
20 contaminated sediment. The RI/FS concluded that the estimated lifetime risks associated with  
21 consumption of 1 pound/month (15 grams/day) of Commencement bay fish were  $2 \times 10^{-4}$ . In 1997,  
22 EPA updated the risk assessment assumptions for PCBs. Using revised assumptions regarding a high-  
23 end tribal fishing and consumption scenario of 123 grams/day (approximately 20 meals per month),  
24 current estimated life time risks for human health increased to  $9.8 \times 10^{-4}$  for the CB/NT Site, and  $1.1$   
25  $\times 10^{-3}$  for the Hylebos Waterway. Contamination of CB/NT sediments by a wide variety of organic  
26 and inorganic chemicals has been shown to result in substantial adverse effects to biological resources

1 by direct contact and ingestion. Sediment Quality Objectives (SQOs) were developed as the cleanup  
2 standards for the CB/NT Site based on the low AET values for chemicals other than PCBs, and based  
3 on the human health risk assessment for PCBs. Based on an evaluation of biological effects and human  
4 health risks during the RI/FS, the ROD established SQOs at the AET value for specific chemicals, as  
5 set forth in Table 5 of the ROD, Attachment 1.

6  
7 13. After issuance of the Record of Decision and after a particular level of source  
8 control was achieved, EPA initiated remedial design studies on the Hylebos Waterway in 1993. On  
9 November 29, 1993, six entities, ASARCO, Inc., Elf Atochem North America Inc., General Metals of  
10 Tacoma, Inc., Kaiser Aluminum & Chemical Corporation, Occidental Chemical Corporation, and the  
11 Port of Tacoma (collectively known as the Hylebos Cleanup Committee or "HCC") entered into an  
12 Administrative Order on Consent ("AOC") with EPA for the preparation of, performance of, and  
13 reimbursement of oversight costs for Pre-remedial Design Activities for the Hylebos Waterway. The  
14 objectives of the AOC were: (1) to perform pre-remedial design work for the Hylebos Waterway  
15 consistent with the ROD; (2) to perform analyses and studies needed by EPA to select a Remediation  
16 Plan, including an acceptable confined disposal site and any necessary mitigation, which attains  
17 Sediment Quality Objectives identified in the ROD and all applicable or relevant and appropriate  
18 requirements; and (3) to provide for recovery by EPA of its response and oversight costs incurred with  
19 respect to the implementation of the Order.

20 14. Under the AOC, the HCC collected more than 500 physical, chemical, and  
21 biological samples in two sampling rounds to characterize the nature and extent of contamination, and  
22 to develop a cleanup plan to address areas that exceed the SQOs. The HCC also evaluated potential  
23 for natural recovery and the potential for sediment recontamination after the cleanup. Additionally, the  
24 HCC studies inventoried and evaluated potential disposal sites for dredged contaminated sediment.

25 15. The data gathering and analysis conducted by the HCC under the AOC resulted  
26 in a Pre-Remedial Design Evaluation Report, including a proposed Remediation Plan for the Hylebos  
27

1 Waterway. After public comment, a Remediation Plan was approved in the August 3, 2000 ESD as the  
2 final Remediation Plan that was consistent with the ROD and ESDs.

3  
4 16. As illustrated in Figures 3a, 3b, and 3c in the August 2000 ESD, attached as  
5 Attachment 3 to this Order, remedial action is required from the mouth of the Hylebos Waterway to the  
6 upper turning basin at the head of the Waterway. Most of the waterway north of the 11th Street Bridge,  
7 shoreline to shoreline, is to be dredged or capped under the cleanup plan, except for three areas that  
8 have been designated natural recovery areas. South of the 11th Street Bridge but north of the middle  
9 turning basin, four areas require dredging in the channel and capping and/or dredging in the intertidal  
10 portion, and there are four designated natural recovery areas. From the middle (northernmost) turning  
11 basin south to the upper turning basin, most of the waterway will be dredged, shoreline to shoreline,  
12 except for two designated natural recovery areas. Several areas in the upper turning basin  
13 (southernmost), including an area in front of the Puyallup Tribe's Outer Hylebos and an area adjacent  
14 to the former Wasser Winters property, require cleanup of the chemically contaminated sediment.

15 17. Hazardous substances detected in the Hylebos Waterway during the RI/FS that  
16 significantly exceeded the SQO, include but are not limited to, polychlorinated biphenyls (PCBs),  
17 hexachlorobenzene, trichloroethene, tetrachloroethane, 1,2-dichlorobenzene, 1,3-dichlorobenzene,  
18 hexachlorobutadiene, fluoranthene, pyrene, chrysene, benzo(a)pyrene, benzo(a)fluoranthene, dibenzo(a,  
19 h)anthracene, and other high molecular weight polyaromatic hydrocarbons ("HPAH"), flourene,  
20 anthracene, naphthalene, and other low molecular weight polyaromatic hydrocarbons ("LPAH"), lead,  
21 arsenic, zinc, copper, nickel, mercury, and phenol, which forms are known to be toxic to humans and  
22 marine life and are designated as hazardous substances under Section 102(a) of CERCLA, as reported  
23 at 40 C.F.R. Part 302.4.

24 18. Data from the Hylebos Waterway Pre-Remedial Design Evaluation Report  
25 approved by EPA in November 1999 confirm that the hazardous substances detected in the Hylebos  
26 Waterway during the RI/FS remain in the Hylebos Waterway at concentrations that significantly exceed



1 EPA's SQOs for the CB/NT Site. For example, from those chemicals listed in Paragraph 17, PCBs are  
2 present at concentrations up to 24,000 parts per billion ("ug/kg" or "ppb") over eighty times the SQO.  
3 The SQO for PCBs is exceeded in forty-eight percent of surface samples. Hexachlorobenzene exceeds  
4 the SQO with a maximum concentration of 1000 ppb, which is over forty-five times the SQO.  
5 Hexachlorobutadiene exceeds the SQO with a maximum concentration of 1,100 ppb, which is one  
6 hundred times the SQO. HPAHs exceed the SQO with a maximum concentration of 767,000 ppb,  
7 which is forty-five times the SQO. Zinc exceeds the SQO at a maximum concentration of 16,200 parts  
8 per million ("mg/kg" or "ppm"), which is thirty-nine times the SQO. Arsenic exceeds the SQO with  
9 a maximum concentration of 1,260 ppm, which is twenty-two time the SQO. Concentrations of  
10 hazardous substances in the Hylebos Waterway also exceed the SQO in subsurface samples which will  
11 require large areas of the waterway to be dredged to depths of up to twenty feet.  
12

13 19. The contaminants are commingled in the Hylebos Waterway. Numerous  
14 commercial and industrial activities have occurred along the Hylebos Waterway over the past one  
15 hundred years. Facility operations along the Hylebos Waterway, historically and currently, include, but  
16 are not limited to, shipbuilding and dismantling, chlorine manufacturing, chlorinated solvent  
17 manufacturing, oil refining, bulk petroleum storage, metal scrapping and recycling, pesticide production  
18 and research, wood products manufacturing, log sort yards, marinas and boat repair, and aluminum  
19 manufacturing. Fate and transport of hazardous substances released to the Hylebos Waterway is affected  
20 by numerous forces, both natural and from anthropogenic waterway uses. Tidal currents and tidal flux  
21 (the upward/downward fluctuation of volume of water inside the waterway) are mechanisms for  
22 migration and movement of contamination within the Waterway. Ship traffic and ship scour are  
23 additional forces for disturbance of bottom sediments and resuspension of sediment for further migration  
24 from the original source of the release. Additionally, the Hylebos Waterway was dredged numerous  
25 times, segment by segment, throughout the twentieth century, which also is a possible mechanism for  
26 redistribution of contaminated sediment.  
27

1  
2 20. There are numerous pathways for hazardous substances to be released into the  
3 Hylebos Waterway from the facilities located adjacent to and in close proximity to the Waterway.  
4 Contaminated groundwater and direct wastewater discharges containing hazardous substances are  
5 pathways of migration to the Hylebos Waterway. Contaminated soil on upland properties migrate to the  
6 Hylebos Waterway through stormwater runoff. Additionally, historic landfilling and waste disposal  
7 practices directly or indirectly discharged and released hazardous substances to the Hylebos Waterway.  
8 Air emission deposition is considered another pathway for releases of hazardous substances to the  
9 Hylebos Waterway.

10 21. The selected remedy for the CB/NT Site protects human health and the  
11 environment through source control measures that eliminate major sources of contaminants to the marine  
12 environment, especially in relation to bottom sediments. The remedy also provides for sediment  
13 confinement measures that isolate contaminated sediments from sensitive and edible marine resources.  
14 Sediment confinement options include *in situ* capping, confined aquatic disposal, nearshore disposal,  
15 and upland disposal. The final Remediation Plan for the Hylebos Waterway implements the ROD by  
16 identifying the areas in the Waterway that may naturally recover, and identifying the areas and volumes  
17 of sediment that must be dredged or capped, and selecting acceptable disposal sites.

18 22. Due to commingling of hazardous substances throughout the Hylebos Waterway,  
19 liability for response costs is joint and several as among all identified potentially responsible parties.  
20 The harm to public health and the environment resulting from the release of hazardous substances to the  
21 Hylebos Waterway is not divisible or apportionable.

22 23. This Order addresses Segments 1 and 2 of the Hylebos Waterway and remediation  
23 areas located in the Upper Turning Basin. The scope of work addressed in this Order and the selection  
24 of the Respondents to this Order represents EPA's determination of a practical and feasible scope of  
25 work with a manageable number of parties to maximize the implementability of the work required under  
26 this Order. The Atofina Chemicals, Inc. and General Metals of Tacoma, Inc. have conducted pilot  
27

1 studies for cleaning up Segments and 1 and 2 and have conducted studies concerning upland disposal  
2 in a regional landfill. Because that level of work has occurred already, and because Respondents have  
3 a working relationship and have shown they are capable of performing the work, this Order continues  
4 the progress made to date on the cleanup of Segments 1 and 2 on the schedule contained in the attached  
5 Statement of Work.  
6

### 7 8 III. CONCLUSIONS OF LAW AND DETERMINATIONS

9 24. The Hylebos Waterway Site is a "facility" as defined in Section 101(9) of  
10 CERCLA, 42 U.S.C. § 9601(9).

11 25. Each building, structure, pipe, pit, pond, impoundment, landfill, well, ditch,  
12 container, site or area where a hazardous substance has been deposited, stored, disposed of, or placed,  
13 or otherwise come to be located which released or was a threat of a release of a hazardous substance to  
14 the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

15 26. Each Respondent is a "person[s]" as defined in Section 101(21) of CERCLA, 42  
16 U.S.C. § 9601(21).

17 27. Each Respondents is a "liable party" as defined in Section 107(a) of CERCLA,  
18 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

19 28. The substances listed in Paragraph 14 are found at the Site and are "hazardous  
20 substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21 29. These hazardous substances have been, are being, and are threatened to be  
22 released from the Site into the surface water and marine sediments.

23 30. The past disposal and present migration of hazardous substances to and from the  
24 Site are a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25 31. The potential for future migration of hazardous substances from the Site poses  
26 a threat of a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

1  
2 32. The release and threat of release of one or more hazardous substances from the  
3 facility may present an imminent and substantial endangerment to the public health, welfare, or the  
4 environment.

5 33. The contamination and endangerment at this Site constitute an indivisible injury.  
6 The actions required by this Order are necessary to protect the public health, welfare, and the  
7 environment.

8  
9 IV. NOTICE TO THE STATE

10 34. On March 22, 2002, prior to issuing this Order, EPA notified the State of  
11 Washington, Department of Ecology, in writing that EPA would be issuing this Order.

12  
13 V. ORDER

14 35. Based on the foregoing, Respondents are hereby ordered, jointly and severally,  
15 to comply with the following provisions, including, but not limited to, all attachments to this Order, all  
16 documents incorporated by reference into this Order, and all schedules and deadlines in this Order,  
17 attached to this Order, or incorporated by reference into this Order.

18  
19 VI. DEFINITIONS

20 36. Unless otherwise expressly provided herein, terms used in this Order which are  
21 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to  
22 them in the statute or its implementing regulations. Whenever terms listed below are used in this Order  
23 or in the documents attached to this Order or incorporated by reference into this Order, the following  
24 definitions shall apply:

25 A. "CERCLA" shall mean the Comprehensive Environmental Response,  
26 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

1  
2 B. "CB/NT Site" shall mean the Commencement Bay Nearshore/Tideflats Superfund  
3 Site, encompassing approximately 10-12 square miles of shorelines, intertidal areas, bottom sediments,  
4 water, and adjacent lands located in Tacoma, Washington. The upland boundaries of the CB/NT Site  
5 are defined according to the contours of localized drainage basins that flow into the marine waters. The  
6 marine boundary of the CB/NT Site is limited to the shoreline, intertidal areas, bottom sediments, and  
7 water of depths less than 60 feet below mean lower low water. The nearshore portion of the CB/NT Site  
8 is defined as the area along the Ruston shoreline from the Mouth of Thea Foss (formerly City) Waterway  
9 to Point Defiance. The tideflats portion of the CB/NT Site includes the Hylebos, Blair, Sitcum,  
10 Milwaukee, St. Paul, Middle, Wheeler-Osgood, and Thea Foss waterways; the Puyallup River upstream  
11 to the Interstate 5 bridge; and the adjacent land areas. The CB/NT Site encompasses the Hylebos  
12 Waterway Site (containing the Mouth and Head of Hylebos Waterway Problem Areas).

13 C. "Day" shall mean a calendar day unless expressly stated to be a working day.  
14 "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any  
15 period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday,  
16 the period shall run until the end of the next working day.

17 D. "EPA" shall mean the United States Environmental Protection Agency.

18 E. "Ecology" shall mean the Washington State Department of Ecology.  
19 "Institutional Controls" means land and/or water use restrictions which may include, but need not be  
20 limited to, restrictions in the form of contractual agreements, deed restrictions, state or local laws,  
21 regulations, ordinances or other governmental action.

22 F. "Head of Hylebos Waterway Problem Area" shall mean Segments 1 and 2 of the  
23 Hylebos Waterway designated in the Pre-Remedial Design Evaluation Report and that was incorporated  
24 into the August 2000 ESD. A more specific description and maps of Segments 1 and 2 are included in  
25 the SOW and Attachment 3 to this Order.

26 G. "Institutional Controls" or "site use restrictions" means land and/or water use

1 restrictions which may include, but need not be limited to, restrictions in the form of contractual  
2 agreements, deed restrictions, state or local laws, regulations, ordinances or other governmental action.

3  
4 H. "National Contingency Plan" or "NCP" shall mean the National Oil and  
5 Hazardous Substance Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA,  
6 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

7 "Institutional Controls" means land and/or water use restrictions which may include, but need not be  
8 limited to, restrictions in the form of contractual agreements, deed restrictions, state or local laws,  
9 regulations, ordinances or other governmental action.

10 I. "Operation and Maintenance" or "O&M" shall mean all activities required under  
11 the Operation, Maintenance, and Monitoring Plan developed by Respondents pursuant to this Order and  
12 Section IV. of the Statement of Work, and approved by EPA.

13 J. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

14 K. "Performance Standards" shall mean the cleanup standards, standards of control,  
15 and other substantive requirements, criteria or limitations, including Sediment Quality Objectives,  
16 construction and post-construction standards, applicable and relevant and appropriate requirements, and  
17 habitat standards, set forth in the ROD, the 1997 ESD, the August 2000 ESD, the SOW, and approved  
18 work plans and reports under this Order.

19 L. "Record of Decision" or "ROD" "Record of Decision" or "ROD" shall mean the  
20 EPA Record of Decision relating to the CB/NT Site signed on September 30, 1989, by the Regional  
21 Administrator, EPA Region 10, all attachments thereto and all significant differences thereto  
22 documented in the ESD issued on July 28, 1997 and the ESD issued on August 3, 2000. The ROD and  
23 the 1997 and 2000 ESDs are attached as Attachment 1. The July 1997 ESD or the August 2000 ESD  
24 may be referred to or discussed individually or separately from the 1989 ROD in this Order where  
25 appropriate.

26 M. "Remedial Action" or "RA" shall mean those activities, except for Operation and  
27

1 Maintenance, to be undertaken by Respondents to implement the final plans and specifications submitted  
2 by Respondents pursuant to the Remedial Design and Remedial Action Work Plans approved by EPA,  
3 including any additional activities required under Section X, XI, XII, XIII, and XIV of this Order.  
4

5 N. "Remedial Design" or "RD" shall mean those activities to be undertaken by  
6 Respondents to develop the final plans and specifications for the Remedial Action pursuant to the  
7 Remedial Design Work Plan.

8 O. "Response Costs" shall mean all costs, including direct costs, indirect costs, and  
9 accrued interest incurred by the United States to perform or support response actions at the Site.  
10 Response costs include, but are not limited to, the costs of overseeing the Work, such as the costs of  
11 reviewing or developing plans, reports, and other items pursuant to this Order and costs associated with  
12 verifying the Work.

13 P. "Site" shall mean the Hylebos Waterway, including but not limited to the Mouth  
14 of Hylebos Waterway Problem Area, the Head of Hylebos Waterway Problem Area, and all other areas  
15 of the Hylebos Waterway extending from minus 60 foot depth line in the bay to the mouth of the  
16 Hylebos Creek. The Hylebos Waterway encompasses approximately 285 acres, in the northern-most  
17 Waterway in Commencement Bay that is bordered by Taylor Way to the south and Marine View Drive  
18 to the north in Tacoma, Pierce County, Washington and depicted generally on the map attached to this  
19 Order as Attachment 2.

20 Q. "Statement of Work" or "SOW" shall mean the statement of work for  
21 implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site,  
22 as set forth in Attachment 4 to this Order. The Statement of Work is incorporated into this Order and  
23 is an enforceable part of this Order.

24 R. "Section" shall mean a portion of this Order identified by a Roman numeral and  
25 includes one or more paragraphs.

26 S. "State" shall mean the State of Washington.

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2 T. "United States" shall mean the United States of America.

3 U. "Waste Material" shall mean (1) any "hazardous substance" under Section  
4 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33),  
5 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27);  
6 and (4) any "hazardous material" under the Washington's Model Toxics Control Act, Washington RCW  
7 70.105D.

8 V. "Work" shall mean all activities Respondents are required to perform under this  
9 Order to implement the ROD in the Hylebos Waterway, including Remedial Design, Remedial Action,  
10 Operation and Maintenance, and any activities required to be undertaken pursuant to the SOW and  
11 Sections VII through XXIV, and XXVII of this Order.

12  
13 VII. NOTICE OF INTENT TO COMPLY

14 37. a. Respondents shall provide, not later than ten (10) days after the effective  
15 date of this Order, written notice to EPA's Remedial Project Manager ("RPM") stating whether they will  
16 comply with the terms of this Order. If Respondents do not unequivocally commit to perform the RD  
17 and RA as provided by this Order, they shall be deemed to have violated this Order and to have failed  
18 to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior  
19 to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under  
20 Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required  
21 by this paragraph shall not be deemed to be acceptance of Respondents' assertions.

22 b. The Notice shall also contain the information required by Paragraphs 82  
23 and 91 of this Order.



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VIII. PARTIES BOUND

38. This Order shall apply to and be binding upon each Respondent identified in Paragraph 3, their directors, officers, employees, agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondents shall alter any of the Respondents' responsibilities under this Order.

39. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any Work under this Order, within five (5) days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing any Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors, and agents comply with this Order; and perform any Work in accordance with this Order.

40. Within forty-five (45) days after the effective date of this Order each Respondent that owns real property comprising a part of the Site shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within sixty (60) days after the effective date of this Order, send notice

1 of such recording and indexing to EPA.

2  
3 41. Not later than sixty (60) days prior to any transfer of any real property interest in  
4 any property included within the Site, Respondents shall submit a true and correct copy of the transfer  
5 documents to EPA, and shall identify the transferee by name, principal business address, and effective  
6 date of the transfer.

7  
8 **IX. WORK TO BE PERFORMED**

9 42. Respondents shall cooperate with EPA in providing information regarding the  
10 Work to the public. As requested by EPA, Respondents shall participate in the preparation of such  
11 information for distribution to the public and in public meetings which may be held or sponsored by  
12 EPA to explain activities at or relating to the Site.

13 43. **Selection of Supervising Contractor.**

14 a. All aspects of the Work to be performed by Respondents under this Order shall  
15 be under the direction and supervision of the Supervising Contractor, the selection of which shall be  
16 subject to disapproval by EPA. Within fifteen (15) days after the effective date of this Order,  
17 Respondent shall notify EPA in writing of the name, title, and qualifications of any contractor proposed  
18 to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed.  
19 If at any time thereafter, Respondents propose to change a Supervising Contractor, Respondents shall  
20 give such notice to EPA and must obtain an authorization to proceed from EPA before the new  
21 Supervising Contractor performs, directs, or supervises any Work under this Order.

22 b. EPA will either approve each proposed Supervising Contractor(s),  
23 accompanied by an authorization to proceed, or issue a notice of disapproval. If EPA disapproves a  
24 proposed Supervising Contractor(s), EPA will notify Respondents in writing. Within fourteen (14) days  
25 of EPA's disapproval of any proposed contractor, Respondents shall submit to EPA a list of contractors  
26 (which does not include the contractor(s) previously disapproved by EPA) that would be acceptable to

1 them, including the qualifications of each contractor. EPA will provide written notice of the names of  
2 any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other  
3 contractors. Respondent may select any contractor from those not disapproved and shall notify EPA of  
4 the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed. If  
5 at any time after EPA approves a Supervising Contractor, Respondents propose to change that  
6 Supervising Contractor, Respondents shall give such notice to EPA and must obtain an approval and an  
7 authorization to proceed from EPA before the new Supervising Contractor performs, directs, or  
8 supervises any Work under this Order.

9  
10 c. With respect to any proposed Supervising Contractor, Respondents shall  
11 demonstrate that the proposed project manager has a quality system that complies with ANSI/ASQC  
12 E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and  
13 Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting  
14 a copy of the proposed project manager's Quality Management Plan (QMP). The QMP should be  
15 prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management  
16 Plans (QA/R-2)," (EPA/240/B-01/002) or equivalent documentation as determined by EPA.

17 A. Remedial Design

18 44. Respondents shall submit a Remedial Design Work Plan ("RD Work Plan") for  
19 EPA review and approval in compliance with Sections IV., Task 1 and V. of the SOW. Respondents  
20 shall perform all design phases described in Section IV. of the SOW and on the schedule contained in  
21 Section V. of the SOW.

22 45. The RD Work Plan shall be consistent with, and shall provide for implementing  
23 the SOW, and shall comport with EPA's "Superfund Remedial Design and Remedial Action Guidance,  
24 OSWER Directive 9355.0-4A" Upon approval by EPA, the RD Work Plan is incorporated into this  
25 Order as a requirement of this Order and shall be an enforceable part of this Order.

26 46. Upon approval of the RD Work Plan by EPA, Respondents shall implement the

1 RD Work Plan according to the schedule in the approved RD Work Plan. Any violation of the approved  
2 RD Work Plan shall be a violation of this Order. Unless otherwise directed by EPA, Respondents shall  
3 not perform further Work at the Site prior to EPA's written approval of the RD Work Plan.  
4

5 B. Remedial Action

6 47. Respondents shall submit a Remedial Action Work Plan ("RA Work Plan) to  
7 EPA for review and approval in compliance with Section IV., Task 3 and Section V. in the SOW. The  
8 RA Work Plan shall be developed in accordance with the ROD and the July 1977 and August 2000  
9 ESDs, the attached SOW, and shall be consistent with the Final Design as approved by EPA.  
10 Respondents shall perform Tasks 4 (Remedial Action Construction) and Task 5 (Performance  
11 Monitoring and Construction Quality Assurance) as described in the SOW, the approved Final Design,  
12 and the approved RA Work Plan, and on the schedule contained in Section V. of the SOW. Respondents  
13 shall implement Task 6 (Operation, Maintenance, and Monitoring) in compliance with Sections IV. and  
14 V. of the SOW.

15 48. Upon approval by EPA, the RA Work Plan is incorporated into this Order as a  
16 requirement of this Order and shall be an enforceable part of this Order.

17 49. Upon approval of the RA Work Plan by EPA, Respondents shall implement the  
18 RA Work Plan according to the schedules in the RA Work Plan. Unless otherwise directed by EPA,  
19 Respondents shall not commence remedial action at the Site prior to approval of the RA Work Plan.

20 50. If Respondents seeks to retain a construction contractor to assist in the  
21 performance of the Remedial Action, then Respondents shall submit a copy of the contractor solicitation  
22 documents to EPA not later than five (5) days after publishing the solicitation documents.

23 51. Within forty-five (45) days after EPA approves the RA Work Plan, Respondents  
24 shall notify EPA, in writing, of the name, title, and qualifications of any construction contractor proposed  
25 to be used in carrying out work under this Order. With respect to any proposed construction contractor,  
26 Respondents shall demonstrate that the proposed construction contractor has a quality system that  
27

1 complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for  
2 Environmental Data Collection and Environmental Technology Programs," (American National  
3 Standard, January 5, 1995), by submitting a copy of the proposed project manager's QMP. The QMP  
4 should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality  
5 Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as  
6 determined by EPA. EPA shall thereafter provide written notice of the name(s) of the contractor(s) it  
7 approves, if any. Respondents may select any approved contractor from that list and shall notify EPA  
8 of the name of the contractor selected within twenty-one (21) days of EPA's designation of approved  
9 contractors. If, at any time, Respondents proposes to change the construction contractor, Respondents  
10 shall notify EPA and shall obtain approval from EPA as provided in this paragraph, before the new  
11 construction contractor performs any work under this Order. If EPA disapproves of the selection of any  
12 contractor as the construction contractor, Respondents shall submit a list of contractors that would be  
13 acceptable to them to EPA within thirty (30) days after receipt of EPA's disapproval of the contractor  
14 previously selected.

15  
16 52. The Work performed by Respondents pursuant to this Order shall, at a minimum,  
17 achieve the Performance Standards specified in the Record of Decision, 1997 and 2000 ESDs, the SOW,  
18 and approved Final Designs and final CQAP and OMMP.

19 53. Notwithstanding any action by EPA, Respondents remain fully responsible for  
20 achievement of the Performance Standards. Nothing in this Order, or in EPA's approval of the SOW,  
21 or in the Remedial Design or Remedial Action Work Plans, or approval of any other submission, shall  
22 be deemed to constitute a warranty or representation of any kind by EPA that full performance of the  
23 Remedial Design or Remedial Action will achieve the Performance Standards. Respondents compliance  
24 with such approved documents does not foreclose EPA from seeking additional work to achieve the  
25 applicable Performance Standards.

26 54. Respondents shall, prior to any off-Site shipment of Waste Materials from the Site  
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1 to an out-of-state waste management facility, provide written notification to the appropriate state  
2 environmental official in the receiving state and to EPA's RPM of such shipment of hazardous  
3 substances. However, the notification of shipments shall not apply to any off-Site shipments when the  
4 total volume of all shipments from the Site to the state will not exceed ten (10) cubic yards.

5  
6 a. The notification shall be in writing, and shall include the following  
7 information, where available: (1) the name and location of the facility to which the hazardous  
8 substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the  
9 expected schedule for the shipment of the hazardous substances; and (4) the method of transportation.  
10 Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision  
11 to ship the hazardous substances to another facility within the same state, or to a facility in another state.

12 b. The identity of the receiving facility and state will be determined by  
13 Respondents following the award of the contract for Remedial Action construction. Respondents shall  
14 provide all relevant information, including information under the categories noted in Subparagraph .a  
15 above, on the off-Site shipments as soon as practicable after the award of the contract and before the  
16 hazardous substances are actually shipped.

17 55. a. Completion of the Remedial Action Construction Inspections and Report..

18 (1.) Within thirty (30) days after Respondents make preliminary  
19 determinations that construction is complete for each discrete element of the Remedial Action, as  
20 defined in the Remedial Action Work Plan, the Respondents shall notify EPA and the State for the  
21 purposes of conducting a prefinal inspection in compliance with Section IV., Task 4 of the SOW.

22 (2.) Within thirty (30) days after completion of any work identified in  
23 the prefinal inspection reports, the Respondents shall notify EPA and the State for purposes of  
24 conducting a final inspection of each discrete Remedial Action element in compliance with Section IV.,  
25 Task 4 of the SOW. Resolution of all outstanding items must be documented in the Final Construction  
26 Report within thirty (30) days of the final inspection.

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3 (3.) Within thirty (30) days after construction is complete for all discrete  
4 Remedial Action elements, including construction of required mitigation, but before all the Performance  
5 Standards have been attained (e.g., prior to natural recovery and full functioning of mitigation),  
6 Respondents shall submit a written Remedial Action Construction Report requesting certification to  
7 EPA. In the report, a registered professional engineer and the Respondents' Project Coordinator shall  
8 state that the Remedial Action construction has been completed in full satisfaction of the requirements  
9 of this Order. The Report shall comply with Section IV, Task 4 of the SOW. The report shall contain  
10 the following statement, signed by a responsible corporate official of each Respondent or the  
11 Respondents' Project Coordinator:

12 To the best of my knowledge, after thorough investigation, I certify that the information  
13 contained in or accompanying this submission is true, accurate and complete. I am aware  
14 that there are significant penalties for submitting false information, including the  
15 possibility of fine and imprisonment for knowing violations.

16 Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant  
17 to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment  
18 of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607. Certification  
19 of Completion of the Remedial Action construction shall not affect Respondents' obligations under this  
20 Order.

21 b. Completion of Remedial Action.

22 (1) Within thirty (30) days after Respondents conclude that the Remedial  
23 Action has been fully performed and all the Performance Standards have been attained (e.g., natural  
24 recovery and full functioning of mitigation), Respondents shall submit a written Remedial Action  
25 Completion Report requesting certification to EPA for approval. In the report, a registered professional  
26 engineer and the Respondents' Project Coordinator shall state that the Remedial Action has been  
27 completed in full satisfaction of the requirements of this Order. The Report must comply with Section

1 IV., Task 4 of the SOW. The report shall contain the following statement, signed by a responsible  
2 corporate official of each Respondent or the Respondents' Project Coordinator:

3  
4 To the best of my knowledge, after thorough investigation, I certify that the information  
5 contained in or accompanying this submission is true, accurate and complete. I am aware  
6 that there are significant penalties for submitting false information, including the  
7 possibility of fine and imprisonment for knowing violations.

8 If it is determined by EPA that Remedial Action is not complete, EPA will require such activities  
9 necessary to complete Remedial Action and Settling Defendants shall perform all activities so required.

10 (2) If EPA concludes, based on the initial or any subsequent report requesting  
11 Certification of Remedial Action Completion and after a reasonable opportunity for review and  
12 comment by the State, that the Remedial Action has been performed in accordance with this Order and  
13 that the Performance Standards have been achieved, EPA will so certify in writing to Respondents.  
14 Certification of Completion of the Remedial Action shall not affect Respondents' obligations under this  
15 Order. EPA's notification shall be based on present knowledge and Respondent's certification to EPA,  
16 and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42  
17 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site,  
18 in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

19 c. Completion of the Work.

20 (1.) Within thirty (30) days after Respondents conclude that all phases  
21 of the Work described in the SOW and this Order, including all necessary Operation and Maintenance,  
22 have been fully performed, Respondents shall submit a UAO Work Completion Report. In the report,  
23 a registered professional engineer shall state that the Work has been completed in full satisfaction of  
24 the requirements of this Order. The report shall contain the following statement, signed by a responsible  
25 corporate official of each Respondent or the Respondents' Project Coordinator:

26  
27 To the best of my knowledge, after thorough investigation, I certify that the information  
28 contained in or accompanying this submission is true, accurate and complete. I am aware  
that there are significant penalties for submitting false information, including the



possibility of fine and imprisonment for knowing violations. If, after review of the written report, EPA, determines that any portion of the Work has not been completed in accordance with this Order, EPA will require such activities necessary to complete the Work and Respondents must perform such activities.

(2.) If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Order, EPA will so notify the Respondents in writing.

(3.) EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

#### X. FAILURE TO ATTAIN PERFORMANCE STANDARDS

56. In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondents that additional response actions are necessary.

57. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable performance Standards, Respondents shall submit for approval by EPA a Work Plan for the additional response activities. The plan shall conform to the applicable requirements of Sections IX, XVI, and XVII of this Order. Upon EPA's approval of the plan pursuant to Section XIV, Respondents shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

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## XI. EPA PERIODIC REVIEW

58. Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional Work or to modify Work previously performed.

## XII. ADDITIONAL RESPONSE ACTIONS

59. EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a Work Plan for additional response activities. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

60. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a Work Plan for the response activities to EPA for review and approval. Upon approval by EPA, the Work Plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the Work Plan by EPA, Respondents shall implement the Work Plan according to the standards, specifications, and schedule in the approved Work Plan. Respondents shall notify EPA of their intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

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XIII. ENDANGERMENT AND EMERGENCY RESPONSE

61. a. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat. Respondents shall within 24 hours of the onset of such action or occurrence orally notify the EPA Project Coordinator or, in the event that the EPA Project Coordinator is unavailable, the Emergency Response Section, Region 10, United States Environmental Protection Agency at (206) 553-1263. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA).

b. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan and the Contingency Plan.

c. Within seven (7) days of the onset of such an event, Respondents shall furnish to EPA and the State a written report, signed by the Respondents' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondents shall submit a report setting forth all actions taken in response thereto.

62. In the event that Respondents fails to take appropriate response action as required by this Section, and EPA takes that action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in Section XXIV of this Order, within thirty (30) days of Respondent's receipt of demand for payment and a Superfund Cost Recovery Package Imaging and Online System (SCORPIOS), which includes all direct and indirect costs incurred by EPA.

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2 63. Nothing in the preceding paragraph shall be deemed to limit any authority of the  
3 United States to take, direct, or order all appropriate action to protect human health and the environment  
4 or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from  
5 the Site.

6 XIV. EPA REVIEW OF SUBMISSIONS

7 64. After review of any deliverable, plan, report, or other item (including agreed upon  
8 partial submissions) which is required to be submitted for review and approval pursuant to this Order,  
9 EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove  
10 the submission and direct Respondents to resubmit the document after incorporating EPA's comments;  
11 or (d) disapprove the submission and assume responsibility for performing all or any part of the response  
12 action. As used in this Order, the terms "approval by EPA", "EPA approval", or a similar term means  
13 the action described in (a) or (b) of this paragraph.

14 65. In the event of approval or approval with modifications by EPA, Respondents  
15 shall proceed to take any action required by the plan, report, or other item, as approved or modified by  
16 EPA.

17 66. Upon receipt of a notice of disapproval or a request for a modification,  
18 Respondents shall, within twenty-one (21) days or such longer time as specified by EPA in its notice of  
19 disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other  
20 item for approval. Notwithstanding the notice of disapproval, or approval with modifications,  
21 Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient  
22 portion of the submission.

23 67. If any submission is not approved by EPA, Respondents shall be deemed to be  
24 in violation of this Order.

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2 XV. REPORTING REQUIREMENTS

3 68. a. In addition to any other deliverables and reporting requirements in this  
4 Order, Respondents shall submit to EPA and the State written monthly progress reports that: (a) describe  
5 the actions which have been taken toward achieving compliance with this Order during the previous  
6 month; (b) include a summary of all results of sampling and tests and all other data received or generated  
7 by Respondents or their contractors or agents in the previous month; (c) identify all work plans, plans  
8 and other deliverables required by this Order completed and submitted during the previous month; (d)  
9 describe all actions, including, but not limited to, data collection and implementation of work plans,  
10 which are scheduled for the next six weeks and provide other information relating to the progress of  
11 construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e)  
12 include information regarding percentage of completion, unresolved delays encountered or anticipated  
13 that may affect the future schedule for implementation of the Work, and a description of efforts made  
14 to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other  
15 schedules that Respondents have proposed to EPA or that have been approved by EPA; and (g) describe  
16 all activities undertaken in support of the Community Relations Plan during the previous month and  
17 those to be undertaken in the next six weeks. Respondents shall submit these progress reports to EPA  
18 and the State by the tenth day of every month following the lodging of this Order until EPA notifies the  
19 Respondents that EPA approves a different schedule for submission of progress reports. If requested  
20 by EPA, Respondents shall also provide briefings for EPA to discuss the progress of the Work.

21 b. The Respondents shall notify EPA of any change in the schedule described  
22 in the monthly progress report for the performance of any activity, including, but not limited to, data  
23 collection and implementation of work plans, no later than seven days prior to the performance of the  
24 activity.

25 69. a. Respondents shall submit four (4) copies of all plans, reports, and data  
26 required by the SOW or this Order, or any other approved plans to EPA in accordance with the schedules  
27

1 set forth in such plans. Respondents shall simultaneously submit one (1) copy of all such plans, reports  
2 and data to the State and one (1) copy to NOAA on behalf of the Natural Resource Trustees at the  
3 addresses set forth below. Respondents shall send one copy to EPA electronically first and follow by  
4 placing three copies in regular mail.  
5

6 As to EPA:

7 Peter Contreras  
8 Regional Project Manager  
9 U.S. Environmental Protection Agency  
10 Region 10  
11 1200 6<sup>th</sup> Ave., ECL-111  
12 Seattle, WA 98101  
13 (206) 553-6708

14 As to the State of Washington:

15 Russ McMillan  
16 State Project Coordinator  
17 Site Cleanup Section  
18 Toxics Cleanup Program  
19 Department of Ecology  
20 P.O. Box 47775  
21 Olympia, WA 98504-7600

22 As to the Natural Resource Trustees:

23 Robert Taylor  
24 Office of General Counsel  
25 Damage and Restoration Center, N.W.  
26 National Oceanographic and Atmospheric Administration  
27 U.S. Department of Commerce  
28 7600 Sand Point Way, N.E.  
BIN C15700  
Seattle, Washington 98115

c. All required written communications other than work plans, design documents, and technical reports shall also be sent by regular mail to the following:

1  
2 Lori Houck Cora  
3 Office of Regional Counsel  
4 U.S. Environmental Protection Agency  
5 Region 10  
6 1200 6<sup>th</sup> Ave.  
7 Seattle, WA 98101  
8 (206) 553-1115  
9

10  
11 70. All reports and other documents submitted by Respondents to EPA (other than  
12 the monthly progress reports referred to above) which purport to document Respondents' compliance  
13 with the terms of this Order shall be signed by an authorized representative of the Respondents.  
14

15  
16 XVI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS  
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18 71. Respondents shall use quality assurance, quality control, and chain of custody  
19 procedures for all samples taken under the SOW and this Order in accordance with "EPA Requirements  
20 for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality  
21 Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and any amendments to these  
22 documents, while conducting all sample collection and analysis activities required herein by any plan.  
23 guidelines. Prior to the commencement of any monitoring project under this Order, Respondents shall  
24 submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW,  
25 the NCP and applicable guidance documents. Respondents shall ensure that such laboratories shall  
26 analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. To  
27 provide quality assurance and maintain quality control, Respondent shall:  
28

29 a. Use laboratories that have a documented Quality System which complies with  
30 ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data  
31 Collection and Environmental Technology Programs," (American National Standard, January 5, 1995),  
32 and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001)  
33 or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under  
34

1 the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System  
2 requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for  
3 subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth  
4 in the QAPP approved by EPA.

5  
6 b. Respondents shall only use laboratories that have a documented Quality System  
7 which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for  
8 Environmental Data Collection and Environmental Technology Programs," (American National  
9 Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2),"  
10 (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may  
11 consider laboratories accredited under the National Environmental Laboratory Accreditation Program  
12 (NELAP) as meeting the Quality System requirements. Respondents shall ensure that all field  
13 methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be  
14 conducted in accordance with the procedures set forth in the QAPP approved by EPA. Ensure that all  
15 contracts with laboratories used by Respondent for the analysis of samples taken pursuant to this Order  
16 provide access to EPA personnel and EPA-authorized representatives; and

17 c. Ensure that the laboratories utilized by Respondent for the analysis of samples taken  
18 pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods  
19 consist of those methods which are documented in the "Contract Lab Program Statement of Work for  
20 Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for  
21 Organic Analysis" (Revision 9, 1994), and any amendments thereto (including amendments made during  
22 the course of the implementation of this Order).

23 72. Upon request, the Respondents shall allow split or duplicate samples to be taken  
24 by EPA or its authorized representatives. Respondents shall notify EPA not less than fourteen (14) days  
25 in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA  
26 shall have the right to take any additional samples that EPA deems necessary.



1  
2 73. In accordance with Section XV of this Order, Respondents shall submit to EPA  
3 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of  
4 Respondents with respect to the Hylebos Waterway Site and/or the implementation of this Order.

5 74. Nothing in this Order shall be deemed to affect, the United States' information  
6 gathering and inspection authorities and rights, including enforcement actions related thereto, under  
7 CERCLA, RCRA and any other applicable statutes or regulations.

8  
9 XVII. COMPLIANCE WITH APPLICABLE LAWS

10 75. All activities by Respondents pursuant to this Order shall be performed in  
11 accordance with the requirements of all Federal and state laws and regulations. EPA has determined that  
12 the activities contemplated by this Order are consistent with the NCP.

13 76. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall  
14 be required for any portion of the Work conducted entirely on-Site.

15 77. Where any portion of the Work requires a federal or state permit or approval,  
16 Respondents shall submit timely applications and take all other actions necessary to obtain and to  
17 comply with all such permits or approvals.

18 78. This Order is not, and shall not be construed to be, a permit issued pursuant to any  
19 federal or state statute or regulation.

20  
21 XVIII. REMEDIAL PROJECT MANAGER

22 79. All communications, whether written or oral, from Respondents to EPA shall be  
23 directed to EPA's Remedial Project Manager:

24 Peter Contreras  
25 EPA Project Coordinator  
26 United States Environmental Protection Agency  
27 Region 10  
28 ECL - 113

1200 Sixth Avenue  
Seattle, Washington 98101

contreras.peter @ epa.gov

80. EPA has the unreviewable right to change its Remedial Project Manager. If EPA changes its Remedial Project Manager, EPA will inform Respondents, in writing, of the name, address, and telephone number of the new Remedial Project Manager.

81. EPA's RPM shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's RPM or Alternate RPM shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action.

82. Within ten (10) days after the effective date of this Order, Respondents shall designate its Project Coordinator, along with its Notice of Intent to Comply with this Order, and shall submit the name, address, email address, and telephone number of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If Respondents wished to change his/her Project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondents' selection of a Project Coordinator shall be subject to EPA approval.

#### XIX. SITE ACCESS AND INSTITUTIONAL CONTROLS

83. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Order and any other order or agreement for remedial action issued and/or entered into by EPA, is owned or controlled by the Respondents, Respondents shall:

a. commencing on the effective date of this Order, provide EPA, the State, and their representatives, including their contractors, with access at all reasonable times to the Site, or

1 such other property, for the purpose of conducting any activity related to this Order, including the  
2 following activities:

- 3 i. Monitoring the Work;
- 4 ii. Verifying any data or information submitted to EPA;
- 5 iii. Conducting investigations relating to contamination at or near the Site;
- 6 iv. Obtaining samples;
- 7 v. Assessing the need for, planning, or implementing additional response
- 8 actions at or near the Site;
- 9 vi. Implementing any Work;
- 10 vii. Inspecting and copying records, operating logs, contracts, or other
- 11 documents maintained or generated by Respondent or its agents, consistent with
- 12 Section XXI (Record Preservation);
- 13 viii. Assessing Respondent's compliance with this Order; and
- 14 ix. Determining whether the Site or other property is being used in a
- 15 manner that is prohibited or restricted, or that may need to be prohibited or
- 16 restricted, by or pursuant to this Order or any other order or agreement issued
- 17 and/or entered into by EPA related to the Site;
- 18 ix. Assessing implementation of quality assurance and quality control practices
- 19 as defined in the approved Quality Assurance Project Plans.

20 b. commencing on the effective date of this Order, refrain from using the

21 Site, or such other property, in any manner that would interfere with or adversely affect the integrity or

22 protectiveness of the remedial measures to be implemented pursuant to this Order, and so as to achieve

23 the following institutional control objectives:

- 24 i. reduce potential exposure of marine organisms to contaminated sediments
- 25 disposed of and confined in aquatic disposal sites or confined by capping;
- 26

1  
2 ii. reduce potential exposure to marine organisms to contaminated sediments  
3 left in place in the Hylebos Waterway; and  
4 c. within forty-five (45) days of EPA's request, execute and record in the  
5 Recorder's Office or Registry of Deeds or other appropriate office of Pierce County, State of  
6 Washington, a restrictive covenant running with land authorized by the Washington Model Toxics  
7 Control Act (MTCA) and that complies with the form and content contained in WAC 173-340-440 that  
8 (i) grants a right of access for the purpose of conducting any activity related to this Order or any other  
9 order or agreement issued and/or entered into by EPA related to the Site, including, but not limited to,  
10 those activities listed in subparagraph a. of this Paragraph, and (ii) grants the right to enforce any  
11 land/water use restrictions mandated under subparagraph b. of this Paragraph, or other restrictions that  
12 EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness  
13 of the remedial measures to be performed pursuant to this Order or any other order or agreement issued  
14 and/or entered by EPA related to the Site. Respondent shall grant the access rights and the rights to  
15 enforce the land/water use restrictions to one or more of the following persons, as determined by EPA:  
16 (i) EPA and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate  
17 grantees.

18 84. If the Site, or any other property where access and/or land/water use restrictions  
19 are needed to implement this Order, is owned or controlled by persons other than Respondent,  
20 Respondent shall use best efforts to secure from such persons within forty-five (45) days from the  
21 effective date of this Order:

22 a. an agreement to provide access thereto for Respondent, EPA, the State,  
23 as well as their respective representatives (including contractors), for the purpose of conducting any  
24 activity related to this Order, including those activities listed in Paragraph 83.a. of this Order;

25 b. an agreement, enforceable by Respondent and EPA, to abide by the  
26 obligations and restrictions, or that are otherwise necessary to implement, ensure non-interference with,

1 or ensure the protectiveness of the remedial measures to be performed pursuant to Paragraph 83.b. and  
2 c. of this Order; and

3 c. within forty-five (45) days of a request from EPA, the execution and  
4 recordation in the Recorder's Office or other appropriate land records office of Pierce County, State of  
5 Washington, a restrictive covenant running with land authorized by the Washington Model Toxics  
6 Control Act (MTCA) and that complies with the form and content contained in WAC 173-340-440 that  
7 (i) grants a right of access for the purpose of conducting any activity related to this Order or any other  
8 order or agreement issued and/or entered into by EPA related to the Site, including, but not limited to,  
9 those activities listed in subparagraph a. of this Paragraph, and (ii) grants the right to enforce any  
10 land/water use restrictions mandated under subparagraph b. of this Paragraph, or other restrictions that  
11 EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness  
12 of the remedial measures to be performed pursuant to this Order or any other order or agreement issued  
13 and/or entered by EPA related to the Site. Respondent shall grant the access rights and the rights to  
14 enforce the land/water use restrictions to one or more of the following persons, as determined by EPA:  
15 (i) EPA and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate  
16 grantees.

17 d. for purposes of this Paragraph, "best efforts" includes the payment of  
18 reasonable sums of money in consideration of access, access easements, land/water use restrictions,  
19 and/or restrictive easements. If any access or land/water use restriction agreements required by  
20 subparagraphs a. or b. of this Paragraph are not obtained within forty-five (45) days of the effective date  
21 of this Order, or any restrictive easements required by subparagraph c. of this Paragraph are not  
22 submitted to EPA in draft form within forty-five (45) days of the date of EPA's request therefor,  
23 Respondents shall promptly notify EPA in writing, and shall include in that notification a summary of  
24 the steps that Respondents have taken to attempt to comply with this Paragraph. EPA may, as it deems  
25 appropriate, assist Respondents in obtaining access or land/water use restrictions, either in the form of  
26

1 contractual agreements or in the form of easements running with the land.

2  
3 e. If EPA determines that land and/or water use restrictions in the form of  
4 state or local laws, regulations or ordinances are needed to implement the remedy selected in the ROD,  
5 ensure the overall integrity and protectiveness thereof, or ensure non-interference therewith, Respondents  
6 shall cooperate with EPA's efforts to secure such governmental controls.

7  
8 XX. DATA/DOCUMENT AVAILABILITY

9 85. Owner Respondents shall allow EPA and its authorized representatives and  
10 contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected  
11 by the work under this Order or affected by work under another Order or agreement with EPA.  
12 Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move  
13 about all property where documents required to be prepared or maintained by this Order are located, for  
14 the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and  
15 contracts related to the Site. Respondents shall allow EPA and its authorized representatives and  
16 contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected  
17 by the work under this Order for reviewing the progress of the Respondents in carrying out the terms of  
18 this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary;  
19 using a camera, sound recording device, or other documentary-type equipment; and verifying the data  
20 submitted to EPA by Respondents. Respondents shall allow EPA and its authorized representatives to  
21 enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring  
22 data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be  
23 interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.

24 86. Respondents may assert a claim of business confidentiality covering part or all  
25 of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203,  
26

1 provided such claim is not inconsistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or  
2 other provisions of the law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b)  
3 and substantiated by Respondents at the time the claim is made. Information determined to be  
4 confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim  
5 accompanies the information when it is submitted to EPA, it may be made available to the public by  
6 EPA or the state without further notice to the Respondents. Respondents shall not assert confidentiality  
7 claims with respect to any data related to Site conditions, sampling, or monitoring.

8  
9 87. Respondents shall maintain for the period during which this Order is in effect, an  
10 index of documents that Respondents claims contain confidential business information. The index shall  
11 contain, for each document, the date, author, addressee, and subject of the document. Upon written  
12 request from EPA, Respondents shall submit a copy of the index to EPA.

#### 13 14 XXI. RECORD PRESERVATION

15 88. Respondents shall provide to EPA, upon request, copies of all documents,  
16 electronic files, and information within their possession and/or control or that of their contractors or  
17 agents relating to activities at the Site or to the implementation of this Order, including, but not limited  
18 to, sampling, analysis, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic  
19 routing, correspondence, or other documents, electronic files, or information related to the Work.  
20 Respondents shall also make available to EPA for purposes of investigation, information gathering, or  
21 testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the  
22 performance of the Work.

23 89. Until ten (10) years after Respondent's receipt of EPA's certification of Remedial  
24 Action Completion under Paragraph 55, each Settling Defendant shall preserve and retain and shall  
25 instruct their contracting agents to preserve and retain all records and documents now in its possession  
26 or control or which come into its possession or control that relate in any manner to the performance of

1 the Work or liability of any person for response actions conducted and to be conducted at the Hylebos  
2 Waterway Site, regardless of any corporate retention policy to the contrary. Until 10 years after the  
3 Respondents' receipt of EPA's certification of Remedial Action Completion under Paragraph 55,  
4 Settling Defendants shall also instruct their contractors and agents to preserve all documents, records,  
5 and information of whatever kind, nature or description relating to the performance of the Work.  
6

7 90. At the conclusion of this document retention period, Respondents shall notify the  
8 United States at least ninety (90) days prior to the destruction of any such records or documents,  
9 including electronic files of deliverables and data, and, upon request by the United States, Respondents  
10 shall deliver any such records, documents, or electronic files to EPA.

11 91. Within ten (10) days after the effective date of this Order, along with its Notice  
12 of Intent to Comply with this Order, Respondents shall submit a written certification to EPA's RPM that  
13 they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents,  
14 electronic files, or other information relating to their potential liability with regard to the Site since  
15 notification of potential liability by the United States or the state, or the filing of suit against it regarding  
16 the Site. Respondents shall not dispose of any such documents without prior approval by EPA.  
17 Respondents shall, upon EPA's request and at no costs to EPA, deliver the documents or copies of the  
18 documents to EPA.

19  
20 XXII. DELAY IN PERFORMANCE

21 92. Any delay in performance of this Order that, in EPA's judgment, is not properly  
22 justified by Respondents under the terms of this paragraph shall be considered a violation of this Order.  
23 Any delay in performance of this Order shall not affect Respondents obligations to fully perform all  
24 obligations under the terms and conditions of this Order.

25 93. Respondents shall notify EPA of any delay or anticipated delay in performing  
26 any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate  
27



1 RPM within forty-eight (48) hours after Respondents first knew or should have known that a delay might  
2 occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within  
3 five (5) business days after notifying EPA by telephone, Respondents shall provide written notification  
4 fully describing the nature of the delay, any justification for delay, any reason why Respondents should  
5 not be held strictly accountable for failing to comply with any relevant requirements of this Order, the  
6 measures planned and taken to minimize the delay, and a schedule for implementing the measures that  
7 will be taken to mitigate the effect of the delay. Increased costs or expenses associated with  
8 implementation of the activities called for in this Order is not a justification for any delay in  
9 performance.  
10

### 11 XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

12 94. Respondents shall demonstrate their ability to complete the Work required by this  
13 order and to pay all claims that arise from the performance of the Work by obtaining and presenting to  
14 EPA within thirty (30) days after the approval of the RD Work Plan one of the following :

- 15 a. A surety bond guaranteeing performance of the Work;
- 16 b. One or more irrevocable letters of credit equaling the total estimated cost  
17 of the Work;
- 18 c. A trust fund;
- 19 d. A guarantee to perform the Work by one or more parent corporations or  
20 subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with  
21 at least one of the Respondents; or

22 e. A demonstration that one or more of the Respondents satisfy the  
23 requirements of 40 C.F.R. Part 264.143(f). For these purposes, references in 40 CFR 264.143 (f) to the  
24 "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs  
25 estimates" shall mean the amount of financial security specified above. If the Respondents who seek  
26

1 to provide a demonstration under 40 CFR 264.143(f) have provided a similar demonstration at other  
2 RCRA or CERCLA sites, the amount for which they were providing financial assurance at those other  
3 sites should generally be added to the estimated costs of the Work from this paragraph. Respondents  
4 shall demonstrate financial assurance in an amount no less than the estimate of costs for the remedial  
5 design and remedial action contained in the August 2000 ESD for the Site. If Respondents seeks to  
6 demonstrate ability to complete the remedial action by means of internal financial information, or by  
7 guaranty of a third party, they shall resubmit such information annually, on the anniversary of the  
8 effective date of this Order. If EPA determines that such financial information is inadequate,  
9 Respondents shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and  
10 present to EPA for approval one of the other three (3) forms of financial assurance listed above.

11  
12 95. At least seven (7) days prior to commencing any work at the Site pursuant to this  
13 Order, Respondents shall submit to EPA a certification that Respondents or its (their) contractors and  
14 subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or  
15 damages to persons or property which may result from the activities to be conducted by or on behalf of  
16 Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification  
17 is maintained for the duration of the Work required by this Order.

#### 18 19 XXIV. REIMBURSEMENT OF RESPONSE COSTS

20 96. Respondents shall reimburse EPA, upon written demand, for all response costs  
21 incurred by the United States in overseeing Respondent's implementation of the requirements of this  
22 Order or in performing any response action which Respondents fails to perform in compliance with this  
23 Order. EPA may submit to Respondents on a periodic basis an accounting of all response costs incurred  
24 by the United States with respect to this order. EPA's certified Agency Financial Management System  
25 summary data (SCORES Reports), or such other summary as certified by EPA, shall serve as the basis  
26 for payment demands.

1  
2 97. Respondents shall, within thirty (30) days of receipt of each EPA accounting,  
3 remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of  
4 the date that payment of a specified amount is demanded in writing or the date of the expenditure. The  
5 interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and  
6 4 C.F.R. § 102.13.

7 98. Checks shall be by a certified or cashier's check or checks made payable to "EPA  
8 Hazardous Substance Superfund," referencing the name of the Site EPA Site/Spill Identification Number  
9 10-8N, and the title of this Order. Settling Defendants shall send the check(s) to:

10 Mellon Bank  
11 EPA-Region 10  
12 Attn: Superfund Accounting  
13 P.O. Box 360903M  
14 Pittsburgh, PA 15251

15 99. Respondents shall send copies of each transmittal letter and check to EPA's RPM.

16 XXV. UNITED STATES NOT LIABLE

17 100. The United States, by issuance of this Order, assumes no liability for any injuries  
18 or damages to persons or property resulting from acts or omissions by Respondents, or its (their)  
19 directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants  
20 in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be  
21 deemed to be a party to any contract entered into by Respondents or its (their) directors, officers,  
22 employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity  
23 pursuant to this Order.  
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XXVI. ENFORCEMENT AND RESERVATIONS

101. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include, but not be limited to, past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA.

102. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

103. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law. Respondents shall be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of any such additional actions.

104. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection, and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

105. Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. 9606(b), of not more than \$ 27,500.00 for each day in which Respondents willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an

1 amount at least equal to, and not more than, three (3) times the amount of any costs incurred by the Fund  
2 as a result of such failure to take proper action.

3  
4 106. Nothing in this Order shall constitute or be construed as a release from any claim,  
5 cause of action, or demand in law or equity against any person for any liability it may have arising out  
6 of, or relating in any way to, the Site.

7 107. If a court issues an order that invalidates any provision of this Order or finds that  
8 Respondents has sufficient cause not to comply with one or more provisions of this Order, Respondents  
9 shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

10  
11 **XXVII. ADMINISTRATIVE RECORD**

12 108. Upon request by EPA, Respondents must submit to EPA all documents related  
13 to the selection of the response action for possible inclusion in the administrative record file.

14  
15 **XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME**

16 109. This Order shall be effective twenty (20) days after the Order is signed by the  
17 Director, Environmental Cleanup Office. All times for performance of ordered activities shall be  
18 calculated from this effective date.

19  
20 **XXIX. OPPORTUNITY TO CONFER**

21 110. Respondents may, within ten (10) days after the date this Order is signed, request  
22 a conference with EPA's Deputy Director of the Environmental Cleanup Office to discuss this Order.  
23 If requested, the conference shall occur within seven (7) days of Respondents' request for a conference.

24 111. The purpose and scope of the conference shall be limited to issues involving the  
25 implementation of the response actions required by this Order and the extent to which Respondents  
26 intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute

1 a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order,  
2 or to seek resolution of potential liability, and no official stenographic record of the conference will be  
3 made. At any conference held pursuant to Responden's' request, Respondents may appear in person or  
4 by an attorney or other representative.  
5

6 112. Requests for a conference must be by telephone followed by a written  
7 confirmation mailed that day to Lori Houck Cora, Assistant Regional Counsel, at (206) 553-1115, at the  
8 address contained in Section XV of this Order.  
9

10 So Ordered, this 25<sup>th</sup> day of MARCH, 2002.  
11

12 By:   
13

14 Michael F. Gearheard, Director  
15 Environmental Cleanup Office  
16 U.S. Environmental Protection Agency  
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